IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV. APPLICATION NO. 322 OF 2004

Bhagwan Narayan Ludbe ..Applicant.

V/s.

The State of Maharashtra ..Respondent.

Shri A.S. Khandeparkar for the Applicant.
Shri K.V. Saste, APP for the State.

CORAM : A.M.KHANWILKAR, J.
DATED : 27.10.2004

PC :-

. Heard the learned counsel for the parties.

2. Rule. Rule made returnable forthwith. By consent taken up for hearing. Shri Saste, APP waives service for Respondent.

3. In so far as the finding of guilt is concerned, for offence punishable under sections 279 and 304(A), I see no reason to depart from the conclusion reached by the courts below. Courts below on analysing materials on record have found as of fact that the applicant was driving the vehicle rashly and negligently. Therefore, no fault can be found with

the finding, regarding conviction under sections 279 and 304 (A) of IPC.

4. The only question that requires to be exmained in this revision application is about the question of sentence. The trial court has imposed sentence on the applicant to suffer simple imprisonment for two months and pay a fine of Rs. 500/-, in default to undergo simple imprisonment for 15 days in connection with the offence under section 279 and simiple imprisonment for a period of six months and pay fine of Rs. 1000/- in default to undergo simple imprisonment for one month in connection with the offence under section 304(A) of IPC and further simple imprisonment of one month in connection with offence punishable under section 184 of the Motor Vehicle Act. The substantive sentences have been directed to run concurrently.

5. The applicant submits that having regard to the tender age of the applicant, coupled with the fact that the applicant himself suffered serious injuries and was hospitalized and lost his near relation in the accident; as well as the appilcant has already undergone almost period of three months of sentence, the applicant deserves to be shown leniency and be

released on the basis of sentence already under gone. Learned APP on the other hand submits that both the courts below have considered the matter on the point of sentence in proper perspective and applying the legal position stated by the Apex Court, the offence under section 304(A) should not be dealt with lightly, the sentence awarded upto six months, needs no interference.

6. However, considering all the facts and circumstances of the present case and having regard to the fact that the applicant has already undergone substantial part of the sentence imposed by the courts below, the sentence as imposed deserves to be modified to the one already undergone by the applicant. Accordingly, this application succeeds to this limited extent. The applicant be set at liberty of not required in any other offence.

7. An authenticated copy of this order be issued.

.....